

SENATE BILL REPORT

ESHB 1329

As Reported by Senate Committee On:
State Government & Elections, February 23, 2022

Title: An act relating to public meeting accessibility and participation.

Brief Description: Concerning public meeting accessibility and participation.

Sponsors: House Committee on Local Government (originally sponsored by Representatives Wicks, Pollet, Taylor, Ryu, Wylie, Shewmake, Bateman, Lovick, Fey, Morgan, Lekanoff, Harris-Talley and Peterson).

Brief History: Passed House: 1/12/22, 79-16.

Committee Activity: State Government & Elections: 3/19/21, 3/24/21 [DPA]; 2/18/22, 2/23/22 [DPA].

Brief Summary of Amended Bill

- Encourages public agencies to provide remote access to governing body meetings, and to record and post recordings of meetings online for at least six months.
- Requires governing bodies to provide an opportunity for public comment at or before every regular meeting at which final action is taken, except in emergency situations.
- Requires governing bodies, if feasible, to provide an opportunity for remote oral comment for an individual at a meeting upon request if the individual will find physical attendance at a meeting difficult.
- Allows a public agency to hold meetings of its governing body remotely or with limited in-person attendance after a declared emergency.
- Requires that the public be allowed to listen in real time and at no cost to meetings that are held remotely or with limited in-person attendance.
- Requires all public agencies, except for certain special purpose districts,

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

cities, and towns, to post agendas online for regular meetings and for special meetings held remotely or with limited in-person attendance.

SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

Majority Report: Do pass as amended.

Signed by Senators Hunt, Chair; Kuderer, Vice Chair; Wilson, J., Ranking Member; Hasegawa and Hawkins.

Staff: Samuel Brown (786-7470)

Background: Open Public Meetings Act. The meetings of the governing body of a public agency must, with limited exceptions, be open to the public. Any member of the public who wants to attend such a meeting must be permitted to do so without conditions, such as requiring the provision of a name or address, imposed on attendance. Governing bodies may not adopt any ordinance, resolution, rule, regulation, order, or directive outside of a properly noticed meeting that is open to the public. Any action taken at a meeting that violates these requirements is void. Governing bodies are not required to take public testimony at a meeting.

The governing body may enter into executive session for deliberations, and exclude the members of the public from the executive session, under certain circumstances. Minutes must be taken at all regular and special meetings and subsequently made available for public inspection.

Special Meetings. Special meetings may be held if certain notice requirements are met, including the posting of notice on an agency's website and the prominent display of notice outside of its principal location at least 24 hours prior to the meeting. If the meeting will be held somewhere other than the agency's principal location, then notice must also be posted at that location at least 24 hours prior to the meeting. An agency is not required to post notice of the special meeting on its website if it:

- does not have a website;
- has fewer than ten full-time equivalent employees; or
- does not employ anyone whose job description or contract includes maintaining or updating the website.

Meetings During Emergencies. When an expedited response from a governing body is needed to respond to an emergency, such as a fire, flood, or earthquake, and compliance with notice requirements is impractical and would increase the likelihood of injury or damage, the governing body may meet at a location other than a regular meeting site, and without first providing notice.

Summary of Amended Bill: Remote Access to Public Meetings. Any public agency which held at least some public meetings remotely prior to March 1, 2021, may continue to do so with no declared state of emergency if the agency provides an option for the public to listen to the proceedings. Public agencies are encouraged to:

- provide increased public access and participation in governing body meetings through real-time telephone, Internet, or other readily available means of remote access to the meeting at no cost to members of the public;
- make an audio or video recording of, or provide a streaming option for, all regular governing body meetings; and
- make the recordings of public meetings available online for at least six months.

Attendance at Public Meetings. A governing body may limit attendance at a public meeting or hold a meeting remotely during a declared state of emergency if it determines the meeting cannot be held in-person with reasonable safety. The public agency must provide an option for the public, at no cost, to listen to the meeting if in-person attendance is at all restricted. If the public agency has not provided such an option, then no action may be taken at the meeting. Notice provided for a remote meeting or a meeting with limited public attendance must provide instructions for how the public may attend remotely.

Agencies may impose generally applicable conditions on meeting attendance, including at remote meetings or meetings with limited in-person attendance, that the governing body determines are reasonably necessary to protect public health or safety, or against interruption of the meeting. There must be an opportunity for public comment at or before every regular meeting in which a public agency governing body takes final action, except in emergency situations. Public comment may be:

- taken orally at the meeting; or
- through an opportunity for submitting written comments prior to the meeting.

If public comment is offered through written submission, the governing body may set a reasonable deadline for submissions, and comments must be distributed to members of the governing body.

Accommodations. The governing body must, when feasible, provide an opportunity for individuals to provide oral comment remotely upon request if an individual will have difficulty physically attending the meeting if oral public comment is to be taken at the meeting.

Executive Sessions. The purpose for which the governing body of a public agency goes into executive session must be entered into the meeting minutes.

Notice of Public Meetings. An agency may share a website with, or have its website hosted by, another agency. An agency must post regular meeting agendas online at least 24 hours prior to the scheduled meeting unless it is a special purpose district, city, or town:

- with less than \$400 million of taxable property;

- with fewer than 3000 residents; and
- where posting notice online would cost more than 0.1 percent of the jurisdiction's budget.

Notice of Special Meetings. Notice of special meetings must be posted online unless the agency:

- does not have or share a website;
- has no full-time equivalent employees; or
- has no personnel whose duty it is to maintain or update the website.

Notice of any special meeting held remotely or with limited in-person attendance due to a declared emergency must be posted online if the agency has or shares a website.

Notice of a special meeting does not need to be physically posted at the agency's principal location:

- when physical posting cannot be done with reasonable safety under the circumstances; or
- for a meeting held remotely or with limited in-person attendance due to a declared emergency if notice of the meeting is instead posted on the agency's website.

EFFECT OF STATE GOVERNMENT & ELECTIONS COMMITTEE AMENDMENT(S):

Remote Access to Public Meetings. Any public agency which held at least some public meetings remotely prior to March 1, 2021, may continue to do so with no declared state of emergency if the agency provides an option for the public to listen to the proceedings.

Attendance at Public Meetings. A governing body may limit attendance at a public meeting or hold a meeting remotely during a declared state of emergency if it determines the meeting cannot be held in-person with reasonable safety. The public agency must provide an option for the public, at no cost, to listen to the meeting if in-person attendance is at all restricted. If the public agency has not provided such an option, then no action may be taken at the meeting. Notice provided for a remote meeting or a meeting with limited public attendance must provide instructions for how the public may attend remotely.

Agencies may impose generally applicable conditions on meeting attendance, including at remote meetings or meetings with limited in-person attendance, that the governing body determines are reasonably necessary to protect public health or safety, or against interruption of the meeting.

Notice of Public Meetings. An agency may share a website with, or have its website hosted by, another agency. An agency must post regular meeting agendas online at least 24 hours prior to the scheduled meeting unless it is a special purpose district, city, or town:

- with less than \$400 million of taxable property;

- with fewer than 3000 residents; and
- where posting notice online would cost more than 0.1 percent of the jurisdiction's budget.

Notice of Special Meetings. Notice of special meetings must be posted online unless the agency:

- does not have or share a website;
- has no full-time equivalent employees; or
- has no personnel whose duty it is to maintain or update the website.

Notice of any special meeting held remotely or with limited in-person attendance due to a declared emergency must be posted online if the agency has or shares a website.

Notice of a special meeting does not need to be physically posted at the agency's principal location:

- when physical posting cannot be done with reasonable safety under the circumstances; or
- for a meeting held remotely or with limited in-person attendance due to a declared emergency if notice of the meeting is instead posted on the agency's website.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Substitute House Bill (Regular Session 2022):

The committee recommended a different version of the bill than what was heard. PRO: This will help save public comment—many folks are not sure whether remote testimony will continue after pandemic measures are lifted. Meeting minutes are not verbatim transcripts and it's difficult to determine if they're accurate without a recording. Provisions encouraging things should be changed to "required"—public agencies should record all meetings, including emergency meetings and executive sessions. This is a compromise product, and many counties will probably take the recommendation to adopt optional procedures. Cities appreciate the work putting this into a form that can be implemented. We're heartened to hear intent to add updates to emergency provisions and make this a more comprehensive Open Public Meetings Act update.

Persons Testifying: PRO: Joe Kunzler; Tom Thiersch; Mike Hoover, Washington State Association of Counties; Candice Bock, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying: No one.